IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10216 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GSRTC

Versus

KALANDARKHAN MEHTABKHAN PATHAN

Appearance:

1. Special Civil Application No. 10216 of 1998

MRS VASAVDATTA BHATT for Petitioner No. 1

MR MUKESH H RATHOD for Respondent No. 1

MR NIRDOSH H RATHOD for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 22/01/2004

ORAL JUDGEMENT

1. The Gujarat State Road Transport Corporation has

filed this petition challenging the award made by the Labour Court, Vadodara in Reference (LCV) No. 1175/1994 dated 12th January, 1998, whereby the petitioner has been directed to reinstate the respondent on his original post with continuity of service and to pay 50% of back wages and also to pay a sum of Rs.500/= towards the cost of the litigation.

2. From the record of the petition it appears that the respondent at the relevant time was working as the Conductor in the employment of the petitioner and he was discharging his duties at Vadodara Depot. He was charged of remaining unauthorisedly absent for the period between 19th January, 1994 and 10th February, 1994. It appears that during that period he was served with the notice but he had not resumed the duty. He was, therefore, served with the show cause notice dated 23rd May, 1994 calling upon him to show cause why he should not be dismissed from service. He was thereafter dismissed from the service vide order dated 18th August, 1994 passed by the petitioner. His request to take him back in the service was turned down and, therefore, he raised the dispute which was ultimately referred to the Labour Court under the provisions of section 10(1)(c) of the Industrial Disputes Act (for short 'I.D. Act') vide order dated 8th December, 1994.

3. Before the Labour Court it was contended by the respondent that he had been rendering services to the petitioner efficiently, sincerely and diligently and despite that he was dismissed from the service. He had further averred that his reply to the show cause notice was not at all taken into consideration. He had further averred that he had remained absent only because he was suffering from illness of hypertension and medical certificate to that effect was produced before the authority. Lastly it was contended that the inquiry was held ex-parte and no opportunity was given to him for defending his interest. It was, therefore, prayed that the order of dismissal dated 18th August, 1994 be quashed and set aside and the workman i.e. respondent be directed to be reinstated on his original post with full back wages and all other incidental benefits.

3.1. The claim of the respondent was contested by the petitioner by filing reply at Exh. 10 wherein it was contended that the respondent had remained absent without taking prior permission of the superior authority and thereby he had committed the act of misconduct. It was further submitted that despite intimation, he had not reported for duty nor he had supplied any plausible

explanation for remaining absent without leave. It was, therefore, prayed that the reference be dismissed.

4. The Labour Court, on the strength of the material produced before it, came to the conclusion that considering the nature of the alleged act of misconduct, the penalty imposed upon the respondent was very harsh requiring its interference under the provisions of section 11-A of the I.D. Act. In the opinion of the Labour Court, the act of misconduct which was held to be proved was not that grave so as to warrant imposition of penalty of dismissal from the service which amounted to causing his economic death. The Labour Court, therefore, on the question of punishment interferred with the order of dismissal passed by the concerned authority and quashed and set it aside and directed reinstatement with 50% back wages.

5. Mrs. Vasavdatta Bhatt, learned advocate appearing for the petitioner has submitted that the conclusion drawn by the Labour Court was absolutely erroneous in view of the fact that the respondent had remained unauthorisedly absent and thereby he had committed a serious act of misconduct, which required imposition of penalty of dismissal. She has further submitted that considering the facts and circumstances of the case, no interference was required to be made by the Labour Court on the question of penalty imposed upon the respondent. She has lastly submitted that presuming that the order of dismissal passed against respondent was very harsh, then also the Labour Court ought to have imposed some punishment to teach a lesson to the respondent.

5.1. As against that, Mr. M.H. Rathod, learned advocate appearing for the respondent has supported the judgment and award and has submitted that the same being just and proper, this Court may not interfere with the decision of the Labour Court and the petition be dismissed.

6. Having considered the rival submissions and after perusing the record of this petition, it appears that the respondent who worked as a Conductor at the relevant point of time had remained absent between 19th January, 1994 and 10th February, 1994. It also appears that he had remained absent without obtaining leave of the concerned authority and despite the notice he had not resumed the duty. However, in the opinion of the Labour Court the punishment imposed by the Disciplinary Authority was very harsh. It, therefore, thought it fit to interfere with it while exercising power under section

11-A of the I.D. Act. By now it is a well settled principle of law that the judicial review of the impugned decision u/S. 11-A of the I.D. Act is very limited. When the Labour Court has exercised that power and has come to the conclusion to the effect that the penalty imposed by the Disciplinary Authority was grossly disproportionate to the gravity of the act of misconduct alleged, it is not now proper for this Court under Article 227 of the Constitution of India to reappreciate the material on record and to review the decision of the Labour Court on the quantum of penalty. This would be more so because by virtue of the decision of the Labour Court the respondent has been reinstated in the service by the Department on his original post with effect from 5th October, 1998. It will now not be proper for this Court after period of five years to disturb the respondent from his service and to send him home. With the decision of the Labour Court and also with the passage of time, the equities have now turned in favour of the respondent.

7. I am, therefore, of the opinion that the Labour Court's direction of reinstatement is not required to be disturbed. However, so far the question of payment of back wages is concerned, it certainly requires interference by this Court since no just or proper reason has been assigned by the Labour Court even for granting 50% of back wages to the respondent. In fact the respondent had been remaining absent without obtaining prior leave of the concerned authority and thereby he was causing monetary loss. Ultimately when the Department got totally exhausted of the misbehaviour of the respondent, it was constrained to terminate his services. When this is so and when there is no proper reason assigned by the Labour Court for award of 50% of back wages, in my opinion, that part of the Labour Court's direction is required to be quashed and set aside and it is ordered to be quashed and set aside. Since by virtue of the stay granted by this Court, the petitioner has not paid the said amount of 50% of the back wages, it is now made clear that the petitioner will not be required to pay the same to the respondent.

The result is that the petition is partly allowed. Rule made absolute to the aforesaid extent with no order as to costs.

[AKSHAY H. MEHTA, J.]

* Pansala.